

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

3. In February, 1994, SRS received a report from a school that the petitioner's oldest child, then age five, had reported

to her teacher that the petitioner frequently left her three-month-old baby in the care of the oldest child while she was out of the apartment. The child purportedly repeated this story to an SRS investigator who interviewed her at the school.

4. Shortly thereafter the SRS investigator interviewed the petitioner at her home. The petitioner admitted that she once left her two older children, then ages five and three, alone for a short period of time while she left the apartment to use a neighbor's phone. She denied, however, that she ever left the baby.

5. While the investigator was in the home the petitioner's five-year-old child kept attempting to pick up the baby, who was lying on the couch next to the petitioner, and walk around the room with her. When the petitioner failed to intervene, the investigator became alarmed for the baby's safety and tried to take her from the older child. At this point the older child became enraged and had to be physically restrained by the investigator from picking up the baby. The petitioner seemed unwilling or unable to intervene.

6. The petitioner admitted to the investigator that she was unable to restrain the older child from frequently picking up the baby and walking around the apartment with her. The

petitioner disagreed with the investigator that this posed a risk to the baby.

7. On March 24, 1994, SRS notified the petitioner that it was also substantiating this report as one of neglect. The petitioner did not appeal this decision, and she cooperated with SRS and other agencies in arranging additional parenting and respite services.

8. The petitioner took no action against SRS until May 2000. At the time she had been volunteering to work in a preschool. Apparently, when she applied for a paid substitute position, she was denied employment because of the above substantiated reports. She has also been unable to obtain approval as a provider of "exempt" child care under Reach Up.

9. At the hearing in this matter, held on October 16, 2000, the petitioner did not dispute the 1991 incident of leaving her child in the bathtub. She stated she now knows it was dangerous and maintains that it never happened again.

10. The petitioner does dispute the part of the 1994 investigation that found she had left her youngest child in the care of the oldest child while she was gone. She admits, however, that she left the two other children (five and three) alone for a short period of time, but never the baby. She also did not dispute the investigator's recollection of the incident

and admissions regarding the five year old carrying the baby around the apartment.

11. It is found that there is insufficient evidence to conclude that the petitioner ever left her three-month-old baby alone with her five-year-old daughter.¹ However, based on the petitioner's admissions and the direct observations of the SRS investigator it is found that the petitioner was unable to control her five-year-old daughter from carrying the baby around the house.

12. For its part, SRS appears to acknowledge that the incidents in question are now at least six years old. The petitioner maintains that they were due to her immaturity and being overwhelmed by caring for three young children. SRS has advised the petitioner that any prospective employer can apply to the Department for a "waiver" of the prohibition against

¹ The petitioner's oldest child, now eleven, did not appear at the hearing. The petitioner maintains that she has now recanted her story. Although the hearsay recollections of the investigator were credible, the lack of a contemporaneous record of the interview, and the indicia that the child was volatile and immature, make it difficult to fully credit what she told the investigator. Also, the fact that the petitioner has been candid in admitting virtually all the other allegations lends credibility to her denial that she ever left the baby alone with the other children.

employing the petitioner because of the substantiated incidents of neglect.

ORDER

The petitioner's request to expunge the reports in question is denied. The portion of the 1994 report finding that the petitioner left her baby alone with her other children shall be stricken.

REASONS

The Department of Social and Rehabilitation Services is required by statute to investigate reports of child abuse and to maintain a registry of all investigations unless the reported facts are "unsubstantiated". 33 V.S.A. §§ 4914, 4915 and 4916.

The statute further provides:

A person may, at any time, apply to the human services board for an order expunging from the registry a record concerning him or her on the grounds that it is not substantiated or not otherwise expunged in accordance with this section. The board shall hold a fair hearing under section 3091 of Title 3 on the application at which hearing the burden shall be on the Commissioner to establish that the record shall not be expunged.

33 V.S.A. § 4916(h)

In order to sustain its burden, SRS is required to show that the registry report is based upon accurate and reliable

information that would lead a reasonable person to believe that a child is abused. . ." See 33 V.S.A. § 4912(10).

In this case the Department's 1991 report has been shown to be both accurate and reliable as to the facts, inasmuch as it was largely based on the petitioner's admissions and the direct observations of a visiting nurse. The 1994 report is similarly supported by the evidence insofar as the petitioner admitted leaving her five and three-year-old children alone, and that she allowed her five-year-old daughter to carry her three-month-old baby around the house. As noted above, the evidence does not establish that the petitioner left her baby in the care of the five-year-old while she was not present.

The second prong of the test is whether a reasonable person would believe that a child has been abused or neglected based on these facts. The statute at 33 V.S.A. § 4912 defines abused child, in pertinent part, as follows:

- (2) An "abused or neglected child "means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. . . .

. . . .

- (4) "Risk of harm" means a significant danger that a child will suffer serious harm other than by accidental means, which harm would be likely to cause physical injury. . . .

- (6) "Physical injury" means death, or permanent or temporary disfigurement or impairment of any bodily organ or function by other than accidental means.

In this case the evidence establishes that the petitioner's older children were at risk of physical injury by the petitioner's practice of leaving them alone in her apartment and that her lack of insight in allowing a five-year-old to carry a baby around the house without being closely supervised placed the baby at substantial risk of injury. As noted above, the petitioner does not dispute that leaving a thirteen-month-old child in a bathtub unattended posed a substantial risk of harm.

If, as it appears, the petitioner has matured and is more experienced and sensitive in her ability to care for children, the Department may wish to take this into consideration in allowing her or a prospective employer to obtain a waiver to allow her to provide child care under SRS and DSW guidelines. At this time, however, inasmuch as the Department's decision in this matter is based on a preponderance of evidence and a reasonable application of the law, the Board is bound to affirm. 3 V.S.A. § 3091(d) and Fair Hearing No. 17.²

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² The Board urges SRS to consider a policy of reviewing old registry cases to determine if the public interest is served by maintaining such files indefinitely.